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The Law of Sales in California and the Uniform Sales Act

THE law of California on sales of personal property is in effect what, in 1848, David Dudley Field thought the common law ought to be. The courts have shown a commendable desire to conform the principles of this branch of law to those announced and applied elsewhere, but they naturally have had to make the code their point of departure, and have been limited in many ways by the specific wording of their statute.

Now 1848 is a long time ago, and in industrial and commercial communities the needs of business men have demanded a very thorough revision of the common law of sales—a law which, we may remember, grew up in an atmosphere of fairs and markets, quite uncomplicated by the elaborate machinery of modern credit and finance. England passed its Sales of Goods Act in 1894, and in 1906 the National Conference of Commissioners on Uniform State Laws finally adopted Professor Williston's draft of an Act to make Uniform the Law of Sales.

Up to the present moment the following states have accepted it: Arizona, 1913; Connecticut, 1907; Illinois, 1915; Maryland, 1910; Massachusetts, 1908; Michigan, 1913; Minnesota, 1917; Nevada, 1915; New Jersey, 1907; New York, 1911; North Dakota, 1917; Ohio, 1908; Pennsylvania, 1915; Rhode Island, 1908; Utah, 1917; Wisconsin, 1911; Wyoming, 1917; Alaska, 1913; Tennessee, 1919. Among them it will be noted there is at least one state which, like California, possesses the Field Code, North Dakota. It will further be seen that the jurisdictions in which the Uniform Sales Act is now in operation are limited neither in location nor in time. Sparsely settled southwestern states were as prompt as teeming eastern ones to accept it, and it is apparently as well adapted to the needs of agricultural communities as to those of predominantly commercial ones.

California was one of the last states to accept the Negotiable Instruments Law, a regrettable hesitation that could not have helped impeding its commercial development. California has further passed the Uniform Warehouse Receipts Act in 1909, and the Uniform Bills of Lading Act in 1919. It is hard to understand why there should be any hesitation now as to the Uniform Sales Act.

The intrinsic merits of the Uniform Sales Act as a piece of legislation need not be enlarged upon. Mr. Williston's textbook is a complete and exhaustive presentation of the reasons why each section was adopted and leaves little to be said on that point. In previous numbers of the *California Law Review*¹ Mr. Lauriz Vold of North Dakota ably presented the arguments which should induce code states to enact it. These arguments, it may be added, were completely successful in Mr. Vold's own state, where, in 1917, the legislature passed the Uniform Sales Act precisely in the form that Mr. Vold suggested and repealed exactly those sections of the North Dakota code which Mr. Vold listed as necessary to be repealed.²

The Law of Sales in California is principally set forth in sections 1721-1798 of the Civil Code. However, there are many provisions that belong to this topic, which are scattered throughout the Code under other heads. It is a considerable convenience to have all the provisions of law that regulate so important and quotidian a transaction as sales, gathered together where they can be readily referred to. But of course it is no mere re-arrangement that is advocated here.

The Uniform Sales Act intended to do three things: first, to state the fundamental common law more simply, clearly and precisely than the decisions of courts had hitherto done; secondly, to modify the common law by bringing it into conformity with the practices and the conveniences of merchants; and thirdly, to select from the conflicting doctrines of fifty or more jurisdictions a common statute that is in no sense a compromise and yet does not omit consideration of what the trend of American opinion has been. In at least one notable case this has been done, although the draughtsman disapproved of the provision he admitted into his statute.

Under these circumstances there would be three excellent reasons for advocating the acceptance of the Uniform Sales Act by California, even if in the main the law as now stated in our

¹ 5 *California Law Review*, 400-414, 470-486; and 6 *Id.* 37-67.

² This list is found in the last of these articles, 6 *California Law Review*, 52, in which the paragraphs of the codes of the four states were arranged in parallel columns. The only sections repealed by the North Dakota legislature (ch. 202, laws of 1917) which are not found in Mr. Vold's list, are §§ 5991 and 5992. These sections do not appear in the California Code, having been added in North Dakota in 1913. On comparing Mr. Vold's list with the tentative draft proposed at the close of this article, it will be seen that certain sections are proposed to be repealed which Mr. Vold does not mention. The reasons for this will be found in the course of the article.

Code were fairly satisfactory. But it is submitted that the present law is far from being satisfactory, that it is antiquated and confused. The only reason that it has not proved more of a hindrance to business dealings lies in the fact that until relatively recently California was mainly an agricultural state. The rapid growth of industry and commerce will bring with it a great multiplication of the transactions which the Uniform Sales Act means to regulate. And it ought to need no special argument to show the advantages of having these regulated, in the way in which they are regulated in nineteen of the most important states of the Union.

In the following pages most of the Code sections referring to sales will be briefly examined. The changes that will be effected by the Uniform Sales Act will be indicated and summarized at the close.

Section 1721, which purports to be a definition of a sale, suffers from every defect such a definition can have. It does not distinguish between sales of realty and personalty, and as far as its wording goes, would include hiring and pledging and other forms of bailment as well.

Section 1722 has no particular function unless in some way it is meant to refer to non-existent goods. But apparently title to non-existent goods can be passed "immediately" in California, provided, that is, that we are quite sure what "immediate" means.

As to sections 1726-1729, it is hard to imagine a more futile and scientifically inaccurate way to state a very simple thing. We are told that "an agreement for sale is either an agreement for sale, an agreement to buy, or an mutual agreement to sell and buy" and these three kinds of agreements are further defined in three separate sections. But an "agreement" involves a consensus. It is not easy to imagine how two parties can "agree to sell" unless one of them promises to buy. These three classes are therefore obviously all one, and the four sections resolve themselves into the statement that an agreement for sale is an agreement for sale—an unimpeachable but not practically valuable proposition.

Section 1730 states the doctrine of potential existence in the following terms: "Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale, whether in existence or not." The Uniform Sales Act deals with all future "goods" in a concise way. The promise to deliver the

title to goods not then owned by the promisor constitutes part of an agreement to sell, as distinguished from a "sale," and that is quite independent of whether these goods had "potential existence" or not.³ The seller assumes the obligation to transfer his title when the goods come into existence or when he acquires it in some other way. Therefore, the contracts discussed in *Grantham v. Hawley*,⁴ *McCarthy v. Blevins*,⁵ and even in *Low v. Pew*,⁶ would be on precisely the same footing. They would be good contracts to sell even though the crops had neither been planted nor grown, the young had not been born, or the fish caught. But by the Uniform Sales Act these agreements would be equally good even if the vendor had not acquired the land or the live stock or the ship and fishing tackle, from which or by means of which these future goods were to be derived. That is sound sense and good business usage, and does not lead us into the metaphysical subtleties whereby things *in posse* are distinguished from things *in esse* and both are differentiated from things merely *in contemplatione animi*. If section 1730 meant to provide just what the Uniform Sales Act does, it will none the less be abrogated without regret, since the Uniform Sales Act states the rule more clearly and unequivocally; but inasmuch as section 1730 has been made the charter of the doctrine of "potential existence" it is doubly desirable to get rid of it.

Even where it has been held that a present sale can be made of things potentially existent, it was found necessary to safeguard the rights of bona fide purchasers. If we reject the whole doctrine we get that result automatically, and we give the disappointed vendee precisely as large a remedy against his defaulting vendor as he could have under any rule.

Sections 1731 to 1734 deal with real property. They ought not to be thrown helter-skelter into an article dealing with personalty. The present writer would gladly welcome any considered attempt to carry out Maitland's cherished wish of completely abrogating the distinction between realty and personalty. There can be little doubt that the civil law distinction between movables and immovables is both more scientific and more practical. But to do so is a formidable task, requiring careful thought. It can not—it should not—be undertaken casually. Bad or good, the

³ Uniform Sales Act, § 5.

⁴ (1616) Hob. 132, 80 Eng. Rep. R. 281.

⁵ (1833) 5 Yerg. (Tenn.) 195, 26 Am. Dec. 262.

⁶ (1871) 108 Mass. 347, 11 Am. Rep. 357.

distinction between realty and personalty exists in our law. It is thoroughgoing and mischievous. Until it is removed, we cannot fail to take cognizance of it. Further, there is a difficulty of properly drafting the proposed statute unless these paragraphs are removed from their present place. That can readily be done if they are transferred to Chapter II of Title IV, Part IV, Division II of the Code, and numbered 1097, 1098, 1099, 1100—all of which numbers are not now represented by any Code section.

Section 1739 states the Statute of Frauds in relation to sales of personalty. Even if the Uniform Sales Act were not in question, this section would need revision. It is in the first place redundant. The entire matter is covered by section 1624 of the Civil Code and section 1973 of the Code of Civil Procedure. Further, it contradicts these sections in a vital respect. Section 1739 uses the words "accepts and receives." Section 1624 of the Civil Code and section 1973 of the Code of Civil Procedure use the terms "accepts *or* receives." Section 1739 has not been amended since 1874. Section 1624 was amended in 1878.⁷ Consequently it is the later statute which makes the acts alternative. Again section 1973 of the Code of Civil Procedure was amended in 1907,⁸ and not only retains the "or," but refers particularly to section 1624 of the Civil Code and not to section 1739. Plainly, therefore, it is very decidedly a *lex posterior*, a more recent statute, which expressly changes the wording of the law. In *Wilson v. Hotchkiss*⁹ the court discusses the point but finds it unnecessary to pass upon it. Four days later, however, the same court considered the question in another department, and held that the "and" of the earlier statute (section 1739 of the Civil Code) was not repealed by the "or" of later statutes.¹⁰ How, on any principle of statutory construction, this desirable result can be obtained is not clear, and it is to be noted that the Supreme Court might take a very different view. The Uniform Sales Act would, of course, remove this discrepancy, and bring back the law to the wording of section 1624, where the courts have wished it to be, even in the face of deliberate statutory change. One other change of importance will be made by the Uniform Sales Act. "Subscribed" will be changed to "sign," so that the technical and pre-

⁷ Cal. Stats. 1878, Amendments to Code, p. 86.

⁸ Cal. Stats. 1907, p. 563.

⁹ (1913) 21 Cal. App. 392, 403, 154 Pac. 1.

¹⁰ *Booth v. Levy* (1913) 21 Cal. App. 427, 430, 131 Pac. 1062; and this is confirmed by the later case of *Gard v. Ramos*, decided in the same year by the same court. 23 Cal. App. 303, 305, 138 Pac. 108.

cise rule of the old law is abrogated by a more liberal rule, in better accord with the evidential character of the Statute of Frauds. It is, to be sure, desirable that the party to be charged should see and assent to all the terms of the contract, but surely the mere position of his signature ought not to be made a ground for relieving him from liability.

The limit of value in the Statute of Frauds under the Uniform Sales Act is five hundred dollars. The old Statute of Frauds set it at ten pounds, or fifty dollars—an amount which the State of New York unintelligently retained. The various jurisdictions that have accepted the Uniform Sales Act kept their own counsel in this matter, the amounts varying from the fifty dollars of New York to the twenty-five hundred dollars of Ohio. There can, accordingly, be no complete uniformity on this point. The limit in California at present is two hundred dollars, and it may not be thought advisable to change to the amount of five hundred dollars specified in the Uniform Sales Act. However, the majority of states have accepted the limit of the Uniform Sales Act, and it cannot work any serious hardship if California follows suit.

Perhaps it is well to note that the limit of two hundred dollars which in 1848 seemed something like an approximation of the ten pounds of the original statute and therefore the fit line of demarcation between inconsiderable and considerable sales of personalty, is very far short of such an approximation in 1920. Indeed the five hundred dollars of the Uniform Sales Act have very likely a smaller purchasing power than did the limit used in California in 1874 when the Code was adopted. If we desired to keep abreast of our feverishly progressive economic history, we should probably find that Ohio's twenty-five hundred dollars is a fairer representative of what the English Parliament meant to enact in 1677.

Section 1740 raises the question of excepting contracts to manufacture goods from the Statute of Frauds. Apparently this widely and violently mooted topic has come before the courts of this state only once, in the case of *Flynn v. Dougherty*,¹¹ in 1891. Counsel on both sides could find no California case on the subject, and the court contented itself with a brief reference to "Read on the Statute of Frauds, chapter 9." The court states that the rule in California is in accord with the weight of American authority. As a matter of fact, in the form in which it appears

¹¹ (1891) 91 Cal. 669, 27 Pac. 1080, 14 L. R. A. 230.

in the Code, it is unique. The weight of American authority seems to incline to the so-called Massachusetts rule, as stated in *Goddard v. Binney*,¹² and this rule Mr. Williston substantially incorporated into the Uniform Sales Act in spite of his personal preference for the English rule, stated in *Lee v. Griffin*.¹³ The emphasis which the Code section 1740 places on the ownership of the materials seems to be derived from the discussion of *specificatio* in the Institutes of Justinian.¹⁴ Taken literally, it would put the law as it was in the very oldest English and American cases before *Lee v. Griffin*, and would thus maintain a doctrine expressly repudiated everywhere for more than sixty years.

Section 1741 deals with realty and consequently must also be removed from this article. It might well be omitted altogether, since it merely repeats section 1624 of the Civil Code as well as section 1971 of the Code of Civil Procedure.

Sections 1748 and 1749 briefly settle the rights and obligations of sellers. We learn that until delivery the seller is a gratuitous bailee of the goods sold, but has the duties and rights of a bailee for hire. In section 1749 he gets a lien, if unpaid, enforced like other liens, a privilege he would have by implication from section 1748. When these rules were drafted in 1848, the enormous complication of rights that might arise between the time that an agreement of sale is made and the time the goods actually reach the hands of the vendee, was unknown and unsuspected. How inadequate so summary a statement of the rules is, may be seen from the details into which the Uniform Sales Act finds it necessary to go, and the difficulties most courts have had in setting a satisfactory standard without a precise statutory statement. Section 1748, furthermore, is not clearly worded. Does the exception apply only to the gratuitous character of the bailment or to the entire paragraph? Of course the Uniform Sales Act will abrogate both sections and substitute therefor the carefully framed statements of the rights and obligations of sellers found in sections 63-70.

Sections 1753 to 1758 deal with the matter of delivery. There is nothing in any of them that is strikingly objectionable except that they are quite inadequate. The law is much better put in the Uniform Sales Act. Nothing is stated about delivery of wrong

¹² (1874) 115 Mass. 450, 15 Am. Rep. 112.

¹³ (1861) 1 B. & S. 272, 121 Eng. Rep. R. 716; and see Williston on Sales, p. 61.

¹⁴ Lib. II, Tit. I, 25.

quantities, or in installments, or to a carrier. The right of examination is not mentioned, nor are C. O. D. sales regulated. Furthermore, apparently delivery and payment are not held to be concurrent conditions, since section 1753 allows a "reasonable time" for delivery upon demand. Nor is the use of the words "other convenient place" in section 1755 without its pitfalls. The definite statement of the presumption of fact as to place of delivery stated in section 43 of the Uniform Sales Act is more explicit and gives fuller consideration to all the circumstances that may arise.

The article on warranties, sections 1763-1778, is one which the Uniform Sales Act would most drastically modify, and the one that most needs modification. The law of warranties is a sore spot in the common law. The civil law is most at variance with ours in this respect, and this variance has had its evil share in making our relations with civil law countries difficult. The Uniform Sales Act does not attempt to introduce into the common law the wide and full obligation which the civil law has always imposed upon a seller. But it does broaden and clarify the rights of the buyer and thus constitutes a notable step in advance.

Section 1763 speaks of "assuring the existence of a future fact" which section 12 of the Uniform Sales Act more correctly calls a "promise." No allowance is made in our Code for affirmations of value, which surely are not warranties and yet are affirmations of a fact.

Section 1765 introduces into the warranty of title the gratuitous words "as his own," which are apparently derived from Blackstone.¹⁵ That does not clear up the doubt which might arise whether the seller must expressly in words claim to sell the goods "as his own," or whether that may be inferred from the mere fact of selling. The Uniform Sales Act unequivocally gives a warranty, first, that he has a right to sell the goods, that they are free from incumbrances, and that the buyer will enjoy quiet possession, and in 13, 4, it avoids the only difficulties that such warranties can present by exempting from their operation those who sell by virtue of a derived authority.

Section 1767 would, if taken literally, in most cases make concealment a ground of rescission on the part of the buyer. It is implied that it might have this effect in *Rauth v. The Southwest*

¹⁵ 1 Jones' Blackstone, Bk. II, *451.

Company.¹⁶ Doubtless this is a morally desirable result, but it is after all uncertain that this is meant, and if so considerable a change in common law principles were intended surely it ought to be made more explicit.

Section 1768 restricts the warranty of merchantability to goods not then in existence. There is no apparent reason for that. The Uniform Sales Act attaches such a warranty to any goods sold by description—which in effect are all unascertained goods—and it further restricts that warranty to those who habitually deal in these commodities. While such a restriction seems to narrow the operation of the warranty, it is desirable because based on mercantile usage.

In section 1769 the Code maintains what is probably the narrowest doctrine of the liability of a manufacturer held anywhere in the United States. According to it only the manufacturer is bound, not the grower, and not, as in the Uniform Sales Act, and as business demands, any seller who knows the use the buyer intends to make of the article. Again, by our Code, the manufacturer is liable only for defects arising from the process of manufacture or the choice of improper materials, and even here his liability is dependent on proof of *scienter*. In other words, he is liable only for his negligence and not really on the implied warranty at all. That this section must be taken to mean exactly what it says is shown in such cases as *Remsburg v. The Hackney Company*.¹⁷ Nothing need be added to the general discussion of this point found in *Williston*¹⁸ to show how completely such a provision fails to meet the requirements of modern business.

Section 1775 restricts the warranty in the case of the sale of food to cases where the food is sold to those who are actually to consume it. That leaves wholly untouched the innumerable intermediate agencies, jobbers and the like, who intervene between manufacturer and consumer in our present-day distributing system, and who are thus left free to spread decayed and poisonous food throughout the country. This section puts the responsibility upon the retailer, who is in a much poorer position than even the jobber to know the quality of that which he sells in sealed tins. Now the Uniform Sales Act, under "fitness for a purpose," makes the liability of any seller absolute. Although food is not expressly mentioned, it is very definitely included, and a number of cases

¹⁶ (1910) 158 Cal. 54, 61, 109 Pac. 839.

¹⁷ (1917) 174 Cal. 779, 164 Pac. 792.

¹⁸ *Williston on Sales*, p. 317 et seq.

decided under the corresponding section in England leaves no doubt that in such cases the "particular purpose for which the goods are required" is, in the case of food, the purpose of being eaten, and no seller of food will be allowed to stultify himself by claiming ignorance of that fact.¹⁹

In an article on "Unwholesome Food as a Source of Liability,"²⁰ Mr. R. M. Perkins discusses the effect of the Uniform Sales Act on sales of food. Section 15, 4, of the Uniform Sales Act reads: "In the case of a contract to sell, or a sale of a specified article, under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose." Suppose that article is food which, as is well known, is often sold under some copyrighted or patent name. Shall the pure food laws be considered abrogated to a certain extent by this position of the Uniform Sales Act? That would be a result vigorously to be repudiated. Mr. Perkins believes the wording of the article does not warrant any such interpretation. But the matter is too vitally important for society to be left to a discretionary interpretation. The whole matter can be readily cleared up, if, to section 15, 4, we add the following words: "Unless the article is food, in which case there is an implied warranty that it is fit for human consumption."

The rights and obligations of the buyer, as set forth in chapter 3 of this article of the Code, sections 1784-1786, would be, just as in the case of the seller, much more fully and better stated in the Uniform Sales Act. We may further note that, according to section 1786, the right to rescind for breach of warranty is confined to executory sales and allowed in executed sales only if "the warranty was intended by the parties to operate as a condition." No suggestion is made as to what warranties operate as conditions and what do not. The Uniform Sales Act properly bundles out the entire futile distinction, and allows rescission for any breach of warranty in any sale.

The regulations of sale by auction, sections 1792-1798 of the Civil Code, are fully covered in the Uniform Sales Act, section 21.

Sections 1804-1807 deal with exchange. This forms a title wholly separate from that devoted to sale. That an exchange was a wholly different thing from a sale was, we all remember, the

¹⁹ *Jackson v. Watson* [1909] 2 K. B. 193, 100 L. T. N. S. 799; *Frost v. Aylsbury Dairy Co.* [1905] 1 K. B. 608, 92 L. T. N. S. 527.

²⁰ 5 *Iowa Law Bulletin*, 106 seq.

opinion of the Proculians and accepted by Justinian in the Institutes.²¹ The Sabinians and their particular exponent, Gaius,²² held, on the irrefragable authority of Homer and the long-haired Achæans, that the two were identical. And the latest of Sabinians, Professor Williston, in the Uniform Sales Act, gives his school its long-delayed revenge—doubtless gratifying to Cassius and Sabinus even now, *si post Stygias aliquid restabimus undas*.

Mr. Vold in his articles did not include section 1807 of the Civil Code among the provisions to be repealed by the Uniform Sales Act, and the legislature of his state did not repeal it. But the exchange of foreign money for currency is quite as much the exchange or sale of a commodity as anything else, and there is no reason why a different rule should govern it. The matter has never come before the courts.

The other sections of the Code that would be affected by the adoption of the Uniform Sales Act can be very briefly treated. Section 3049, which deals with the lien of the seller of personal property, is superfluous in view of the detailed treatment of such liens by the act in question. The same may be said of sections 3076-3080, which constitute Chapter VII of Title XIV of this part and division. Again, sections 3308-3314 are fully covered by the Uniform Sales Act,²³ as are also sections 3353 and 3354.

Section 3387, however, dealing with specific performance, will need a slight modification. It reads at present as follows:

"It is to be presumed that the breach of an agreement for transfer of real property cannot be adequately relieved by pecuniary compensation, and that the breach of an agreement for transfer of personal property can be thus relieved."

The Uniform Sales Act, section 68, provides that in case of a breach of contract to deliver specific or ascertained goods, a court of equity may, if it thinks fit, decree specific performance instead of damages. Professor Williston thought that this section would

²¹ Lib. III, Tit. XXIII, 2.

²² Gaius, Inst. Lib. III, Tit. XIV, 1.

²³ By the repeal of § 3311 and the enactment of the Uniform Sales Act, uncertainty on an important question will be cleared up. The New York rule has long been that by tender of goods, whether originally specific or not, the seller can pass title to the buyer in spite of the latter's rejection of the goods, and that the seller can thereupon treat the goods as the property of the buyer and sue for the contract price. This rule has been accepted by some states and repudiated by others. It might be implied from § 3311 that the rule in California is opposed to this doctrine, but there is at least one dictum in which it is apparently approved. *Hellings v. Heydenfeldt* (1895) 107 Cal. 577, 585, 40 Pac. 1026. The Uniform Sales Act, § 63 makes this doctrine law in a modified form

dispose courts to enlarge somewhat the number of cases where specific performance was allowed.²⁴ Professor Bogert, on the contrary, finds that the statutory rule is in no way broader than that of the common law.²⁵ At any rate, the Uniform Sales Act puts the specific performance of such contracts where it belongs, within the discretion of the court, regulated and guided both by precedent and statute, so that it is quite unnecessary to saddle the courts with a wholly gratuitous presumption. Section 3387, therefore, would by implication be amended by the adoption of the Uniform Sales Act to the extent of omitting the words "and that the breach of an agreement for transfer of personal property can be thus relieved."

Section 1136 would be omitted as quite unnecessary, as also would sections 1140 and 1141.

As far as section 1142 is concerned, the purpose is completely served by the provisions and exception of section 23, Uniform Sales Act. It may be remembered that section 1142 did not mean to provide that any possession of property carried with it the power to give a good title to a purchaser for value.²⁶ It is only possession with power to dispose of the article that has that effect.

At this point it may be well to note the fact that the Uniform Sales Act expressly changes the common law in relation to the right of infants to disaffirm their contracts and recover their property even in the hands of a bona fide purchaser. It is not expressly stated in the Code that an infant may do so, but his right of disaffirmance is put in general terms in sections 34, 35 and 36, and except for the limitation there imposed would carry with it the power mentioned.²⁷ Apparently the matter has not come up in California, but as it is derived from the general common law right of disaffirmance, and as by the common law it is a personal privilege of the infant, it is likely enough that except for the statutory change introduced by the Uniform Sales Act the courts of this state would have followed that rule. For that reason it might be well to modify section 35 of the Civil Code in such a way as to bring it in accord with section 24 of the Uniform Sales

²⁴ Williston on Sales, p. 997.

²⁵ The Sale of Goods in New York, p. 261.

²⁶ *Shafer v. Lacey* (1898) 121 Cal. 574, 54 Pac. 72.

²⁷ Williston on Sales, p. 13, and the cases there cited, to which may be added the more recent case of *Conn v. Boutwell* (1912) 111 Miss. 353, 58 So. 105. For the sake of completeness it might be well to add to the cases given by Prof. Williston: *Miles v. Lingerman* (1865) 24 Ind. 385; *Myers v. Sanders* (1838) 7 Dana (Ky.) 506; *Mustard v. Wohlford* (1859) 15 Gratt. (Va.) 329, 76 Am. Dec. 209.

Act. This could be done by adding a section, to be numbered 35a, which would read as follows: "If before the contract of a minor has been disaffirmed the goods which he has sold have been transferred to another purchaser who bought them in good faith for value, and without notice of his transferor's defect of title, the minor cannot recover the goods from such an innocent purchaser."

Section 36 of the Civil Code, while not inconsistent with the Uniform Sales Act, should be somewhat modified if it is wished to state precisely the law on the question. That can perhaps be most readily done by adding to the section the words "provided that these things shall have been actually delivered to him or to his family."

The Code nowhere defines necessities, but the Uniform Sales Act, in section 2, does so, in the following words: "Necessaries mean goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of delivery." That is surely preferable to the definition sometimes attempted, as in the case of *Shelton v. Pendleton*,²⁸ where it is asserted that "the common law defines necessities to consist only of necessary food, drink, clothing, washing, physic, instruction, and a competent place of residence."

Section 1083 reads: "A transfer vests in the transferee all the actual title to the thing transferred which the transferor then has, unless a different intention is expressed or is necessarily implied." This section, from its position in the Code and from its terms, is meant to apply to sales both of realty and personalty. It is submitted that the section serves no useful purpose in either case, and might give a handle to a disingenuous attempt to argue that the rules as to transfer of title of the Sales Act were meant to be modified by it.

The Uniform Sales Act treats a sale of emblements and of things affixed to the land which it is intended to sever before sale, as a sale of personalty.²⁹ To make it impossible to have any doubt on this matter it might be well to add to section 658 of the Code the following words:

"Except that for purposes of sale, emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale, shall be treated as goods and be governed

²⁸ (1847) 18 Conn. 417, 422.

²⁹ Uniform Sales Act, § 76, under the definition of "Goods."

by the provisions of the title of this Code regulating the sales of goods."

Exactly the same exception should, for the sake of perfect clearness, be attached to section 660 of the Code.

To sum up, it must be evident that the law on the sales of personal property in California, so far as it is dependent upon the Code itself, is nothing less than a lumber-room of obsolete rules and inadequately stated provisions. Besides the general effect of making our law uniform with the law that will doubtless be in operation in most of the states of the Union within a few years; and the further effect of having the common law doctrines fully and clearly stated, the adoption of the Uniform Sales Act will work a number of salutary changes in our present law, of which the most important may be repeated here. First, goods potentially existent will be put in exactly the same class as any other future goods. Second, the Statute of Frauds will be extensively modified in the way already set forth. Third, implied warranties will be much extended and the distinction of remedy between the case of the breach of implied and of express warranty will be abolished. Fourth, things attached to the realty which are agreed to be severed before sale will be considered personalty and will come under the provisions of this statute.

The Uniform Sales Act was prepared by the commissioners and recommended for adoption before the Uniform Bills of Lading Act. Under the Uniform Sales Act, documents of title, such as bills of lading, were made more fully negotiable than they had been before, but still fell somewhat short of complete negotiability. For example, by the Uniform Sales Act a bill of lading, made out to bearer or indorsed in blank, if lost or stolen, could give to no subsequent holder any title to the goods represented by it or any greater claim than the transferor had. When the Uniform Bills of Lading Act was prepared it was decided in accordance with the custom of merchants to make the negotiability complete. The Commissioners on Uniform State Laws therefore suggest that where the Sales Act and the Bills of Lading Act are both passed they should be brought in harmony by omitting entirely the present wording of section 32 of the Uniform Sales Act and substituting therefor the following wording:

§ 32. Who may negotiate a document. A negotiable document may be negotiated by any person in possession of the same, however such possession may have been acquired, if by the terms of the document the bailee issuing it undertakes to

deliver the goods to the order of such person, or if at the time of negotiation the document is in such form that it may be negotiated by delivery.

Obviously, therefore, in adopting the Uniform Sales Act, the legislature of California will doubtless desire to bring it in conformity with the Uniform Bills of Lading law by inserting the alternative wording of section 32 rather than the original one.

The following tentative draft of the necessary preamble to a law enacting the Uniform Sales Act for California is offered:

Title I and Title II of Part IV of Division III of the Civil Code are hereby repealed and a new Title I of Part IV of Division III of said Code is hereby added, to read as follows:

Title I, Part IV, Division III, (New) Civil Code.

(Then should follow the Uniform Sales Act with the slight additional change suggested in section 15, 4, and with section 32 reading as proposed by the commissioners. These sections will be numbered consecutively, beginning with 1721. As the titles repealed contained 86 sections, and as, in its fullest form, the Uniform Sales Act contains not more than 80, there will be no difficulty in fitting the entire statute into the place intended for it. Accordingly, sections 1721-1796 of the proposed new title will correspond exactly with sections 1-76 of the Uniform Sales Act.)

It would be desirable to add to the original draft of the Uniform Sales Act those sections which in most states have been found necessary to avoid errors of interpretation. These would read as follows:

§ 1797 (U. S. A. § 77). **Act does not apply to existing sales or contracts to sell.** None of the provisions of this act shall apply to any sale or to any contract to sell made prior to the taking effect of this act.

§ 1798 (U. S. A. § 78). **No repeal of Uniform Warehouse Receipt Act or Uniform Bills of Lading Act.** Nothing in this act or in any repealing clause thereof shall be construed to repeal or limit any of the provisions of the act to make uniform the law of warehouse receipts, or of the act to make uniform the law of bills of lading.³⁰

§ 1799 (U. S. A. § 79). **Inconsistent legislation repealed.** All acts or parts of acts inconsistent with this act are hereby repealed except as provided in § 1798.

§ 1800 (U. S. A. § 80). **Name of act.** This title may be cited as the Uniform Sales Act.

³⁰ This section was meant to avoid the possible effect of § 32 upon the other acts. It is not really necessary if the alternative form of § 32 is enacted as is here suggested, but it can do no harm to insert this provision also.

Sections 1083, 1136, 1140, 1141, 1142, 3049, 3078, 3079, 3080, 3308, 3309, 3310, 3311, 3312, 3313, and 3314 of the Civil Code are hereby repealed.

Section 36 of the Civil Code is hereby amended to read as follows:

"A minor cannot disaffirm a contract otherwise valid to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them, provided that these things shall have been actually furnished to him or to his family."

Section 658 of the Civil Code is hereby amended to read as follows:

(Then follows the present wording of this section to which are to be added the following words:

"except that for the purposes of sale, emblements, industrial growing crops and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale, shall be treated as goods and be governed by the provisions of the title of this Code regulating the sales of goods.")

Section 660 of the Civil Code is hereby amended to read as follows:

(Then follows the present wording of section 660 to which are to be added the following words:

"except that for the purposes of sale, emblements, industrial growing crops and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale, shall be treated as goods and be governed by the provisions of the title of this Code regulating the sales of goods.")

Section 1612 of the Civil Code is hereby amended to read as follows:

(Then follows the section as it now stands with the following addition:

"Provided that this section shall not apply to the cases provided for in sections 1729 and 1730 of this Code.")

Section 1613 of the Civil Code is hereby amended to read as follows:

(Then follows the section as it now stands with the following addition:

"Provided that this section shall not apply to the cases provided for in sections 1729 and 1730 of this Code.")

Section 1624 of the Civil Code is hereby amended to read as follows:

(The amendment is to consist of a complete omission of paragraph four of this section, and the consequent re-numbering of the remaining six paragraphs from one to six.)

Section 1689 of the Civil Code is hereby amended to read as follows:

(Then follows the section as it now stands with the following additional subdivision:

"6. Under the circumstances provided for in sections 1785 and 1789 of this Code.")

Section 3387 of the Civil Code is hereby amended to read as follows:

"It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation."

A new section is to be added to Part I of Division I of the Civil Code to be numbered 35a and to read as follows:

"If before the contract of a minor has been disaffirmed the goods which he has sold have been transferred to another purchaser who bought them in good faith for value and without notice of his transferor's defect of title, the minor cannot recover the goods from such an innocent purchaser."

Four new sections are to be added to Chapter II of Title IV, Part IV, Division II, of the Civil Code, to be numbered 1097, 1098, 1099, and 1100, and to read as follows:

(These four sections are to have the wording of the present sections 1731, 1732, 1733, and 1734 of the Civil Code.)

A new section is added to Title II of Part II of Division III of the Civil Code, to be numbered 1624a, and to read as follows:

(This section will have the exact wording of section 4 of the Uniform Sales Act.)

Section 1973 of the Code of Civil Procedure is hereby amended to read as follows:

(The amendment is to consist of a complete omission of paragraph four of this section, and the consequent renumbering of the remaining six paragraphs from one to six.)

A new section is to be added to Title II of Part IV of the Code of Civil Procedure, to be numbered 1973a, and to read as follows:

(This section will have the exact wording of section 4 of the Uniform Sales Act.)

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